IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 17619 of 1999

Between:

Amaravadi Amabaiah, S/o.Rajaiah,

Occ: Manager, Warangal District Co.op.Central Bank

Ltd., Subedari, Hanmakonda, R/o.H.No.15-11-155,

Old Iron Merchants Bazar, Near Rama Talkies,

Warangal.

..... PETITIONER

AND

1. The Deputy General Manager/Enquiry Officer,

Warangal District Co.operative Central Bank Limited,

Subedari, Hanmakonda, Warangal District.

2. The General Manager, The Warangal District Co.op.

Central Bank Limited, Subedari, Hanmakonda, Warangal

District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction declaring the action of the 2nd respondent proposing to hold an enquiry, through proceedings Ref.No.B9/Estt./2942/98-99, dated 16-7-1999, into the charges framed against the petitioner which are identical to the facts mentioned in the criminal complaint in Cr.No.262/98 on the file of the Matwada Police Station, Warangal and the consequential action of the 1st Respondent in issuing summons through his

proceedings Rc.No.B9/Enquiry/99-2000, dated 29-7-1999 proposing to hold the enquiry on 20-08-1999 as illegal, arbitrary and unconstitutional apart from being violative of principles of natural justice and the same amounts to compelling the petitioner to disclose his defence in the criminal case and direct the 1st and 2nd respondents to stay the enquiry into the charges framed against the petitioner pending disposal of the case in Crime No.262 of 1998 on the file of the Matwada Police Station, Warangal, Warangal District.

Counsel for the Petitioner :MR.NANDIGAMA KRISHNA RAO

Counsel for the Respondent No.1 : GP FOR COOPERATION

Counsel for the Respondent No.2 : Ms. P. Nageswara Sree

The Court made the following **ORDER**:

The petitioner questions the action of the second respondent in holding the departmental enquiry as regards the charges framed against him which are said to be identical to the facts mentioned in the criminal complaint in Crime No.262 of 1998 on the file of the Matwada Police Station, Warangal, as illegal and also to declare the consequential action of the first respondent in summoning the petitioner to appear in respect of the said enquiry as illegal.

The petitioner worked as Manager in Warangal Branch of the District Cooperative Central Bank since 1992. During the course of the audit in the Warangal Branch, it was found that the petitioner has misappropriated the funds of the bank to a tune of Rs.5,62,875/-. The Auditor submitted a report on 08-12-1998 and basing on the said audit report, the petitioner was suspended on 09-12-1998, pending enquiry. After conducting a preliminary enquiry to confirm the report of the Auditor, the Assistant General Manager opined that further investigation is required as there is likelihood of discovery on the fraud played by the petitioner. Pursuant to the preliminary report dated 10-12-1998 and the auditor's report, a memo was issued to the petitioner on 08-04-1999, calling upon the explanation of the petitioner as to why disciplinary action should not be taken against him for fraudulently misappropriating the funds of the bank. In the said charge memo, it is stated that the petitioner has misappropriated the funds of the bank by altering/fabricating the amounts in the counter-foils of the current account of Bank of Maharashtra and Vysya Bank and by adding a digit prefixing the amount actually remitted at debit side and the amount so altered was credited in his SB Account, as well as in the SB Accounts of his near relatives. Petitioner filed an explanation on 15-04-1999. Even before issuing the charge memo, a criminal complaint was lodged on 16-12-1998 based on the

auditors report dated 05-12-1998, which was received by the second respondent on 09-12-1998. Pursuant to the said complaint dated 16-12-1998, stating that the petitioner had misappropriated the funds during the period from 31-03-1998 to 25-11-1998 amounting to Rs.5,62,875/- and out of the said amount he has remitted a sum of Rs.3,50,000/- on 08-12-1998 through challan No.32 under the suspense payable account towards the misappropriation made by him.

Based on the said complaint, the First Information Report No.262 of 1998 dated 16-12-1998 was registered for the offences under Sections 409, 420, 463, 468 and 477(a) of I.P.C. by the police of Matwada Police Station. After registering the crime only, the said charge memo dated 08-04-1999 was issued, for which the petitioner filed his explanation on 15-04-1999. Thereafter, another charge memo No.2 was issued on 12-06-1999 for which the petitioner filed explanation on 02-07-1999. As the explanation submitted by the petitioner for the charge memos dated 08-04-99 and 12-06-99 were not satisfactory and the respondent-bank appointed Enquiry Officer to conduct enquiry into the charges framed against the petitioner for misappropriation of the funds of the bank and accordingly, decided to conduct regular departmental enquiry.

Pursuant to the said decision, the first respondent was appointed as the Enquiry Officer and he issued summons on 29-07-99, directing the petitioner to appear before him and furnish list of witnesses, whom he desires to examine during the course of enquiry. In reply to the said summons, the petitioner got issued a legal notice dated 14-08-99 stating that the bank has already filed a police complaint based on which a criminal case was registered in Cr.No.262 of 1998 by the police for the said allegations and the police also enquiring into the matter and therefore if the petitioner is called upon to give his evidence disclosing the defence during the pendency of the trial in Criminal case before the criminal Court, it will amount to violation of principles of natural justice and also against Art. 21 of the Constitution of India. Accordingly, a request was made to drop all the departmental proceedings till the criminal case is disposed of.

The learned Counsel appearing for the respondents submits that in the preliminary enquiry conducted by the Assistant General Manager into the acts of the misappropriation by the petitioner, it was found that the petitioner and his family members i.e., his wife, sister-in-law, son and brother-in-law were holding accounts in

the bank and they were examined during the course of preliminary enquiry and based on the verification of records and statements of the account holders as well as the staff members, the Assistant General Manager filed a report on 31-5-1998 wherein, it was found that the petitioner misappropriated the funds to a tune of Rs.27,75,376-15ps. Based on the said finding, a charge memo dated 12-06-99 was issued to the petitioner calling upon him to submit his explanation. The petitioner was permitted to inspect the records. It is stated that the police complaint was given on 16-12-1998, whereas, the charge sheet has been issued subsequently based on the further preliminary enquiry apart from the audit report.

Mr. P.Nageswara Sree, learned Counsel appearing for the respondents submits that the parameters in the departmental enquiry, and the criminal case differs from each other. The departmental proceedings are to find out the quantum of loss caused to the bank and to take action for the misconduct under the Service Regulations and whereas, the Criminal proceedings are for taking penal action for the acts committed by the petitioner during the discharge of his functions. The contention of the petitioner that he is not concerned with the actual misappropriation is incorrect. The petitioner diverted the funds of the bank into his SB Account and into the SB Accounts of his family members. Therefore, the petitioner cannot claim ignorance. The explanation submitted by the petitioner is absolutely nothing to do with the disclosure of the defence in the criminal proceedings. Therefore, the contention of the petitioner that if the departmental proceedings are continued, it will amount disclosing the defence in the criminal case is incorrect.

It is further stated that the police complaint was given on 05-12-1998, but, the charge memos were dated 08-04-1999 and 12-06-1999 and the charge memo dated 12-06-2000 is a changed and different version of the complaint dated 05-12-1998. Even otherwise, there are no complicated questions of facts of law proceeding simultaneously the departmental proceedings, as well as, the criminal proceedings.

It is further stated that pursuant to the charge memos dated 08-04-99 and 12-06-99 and after considering the explanation of the petitioner, the Enquiry Officer opined that earlier Enquiry Officer issued summons dated 26-04-99 calling upon the petitioner to appear before him for deposing the evidence along with relevant records to defend the charges framed against him. The said summons issued by the earlier Enquiry Officer on 26-04-99 were questioned in the Writ Petition No.10889 of 1999. The prayer in the said Writ Petition reads as follows:

> May be pleased to issue appropriate Writ Order or direction to declare the summon issued by the 1st respondent dated 26-04-1999 calling the petitioner to appear before him for deposing along with relevant records, evidence to defend the charges against the petitioner as illegal, arbitrary and unconstitutional apart from being violative of the principles of natural justice and virtually amounts to forcing the petitioner to disclose his evidence in the criminal case registered by the 3rd respondent herein vide in Crime No.262/98 and to consequently set aside the same and to direct the respondents 1 and 2 to stay the recording of the statement of the petitioner, pending disposal of the criminal case in Crime No.262 of 1998 registered by the 3rd respondent.

The perusal of the aforesaid prayer clearly discloses that the petitioner has questioned the acts of the respondent in proceeding with the departmental enquiry on the ground that said action of the respondents in proceeding with the departmental enquiry is illegal, unconstitutional and violative of principles of natural justice and virtually amounts to disclosing the evidence in the criminal case registered by the S.H.O., Matwada Police Station, Warangal in Cr.No.262 of 1998 and consequently to set aside the summons issued by the Enquiry Officer directing the respondents herein to stay the recording of the statement of the petitioner pending disposal of the criminal case in Cr.No.262 of 1998 and the said writ petition No.10889 of 1998 was dismissed as withdrawn on 10-06-99, with the following order:

“The learned Counsel for the petitioner sought permission to withdraw the writ petition. Permission is granted and the writ petition is dismissed as withdrawn. No costs.”

The earlier Writ Petition filed for the same relief was dismissed as withdrawn without any liberty to file a fresh Writ Petition. In view of the aforesaid facts and circumstances of the case, I am of the view that having taken all these grounds in the earlier Writ Petition, it is not open for the petitioner to question the initiation of departmental proceedings once again. Even otherwise, it is not stated before this court as regards to the nature of charges framed in the criminal proceedings. It is

also not known whether the charge sheet was filed or not. The criminal complaint was given in December, 1998. More than five years have been elapsed. Even after the lapse of five years, it is not known what is the present stage of the criminal proceedings.

As per the Judgment of the Apex Court in the case of ***State of Rajastan Vs. B.K. Meena & Others,***[1] the departmental proceedings are liable to be stayed in cases of grave nature of involving questions of fact of law. If the charges are grave and that the case involves complicated questions of law and fact, then only the departmental proceedings can be considered depending upon each facts of the case differed till the completion of the criminal case". In the said judgment, the Apex Court held that the disciplinary tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings.

On the other hand, the learned Counsel appearing for the petitioner relied on a judgment of the Apex Court decided in the case of ***"Capt.M.Paul Anthony, v. Bharat Gold Mines Ltd. And another"***[2]. The facts in the said case and the facts of the present case are completely different and the said case was not relating to the simultaneous proceedings under departmental, as well as, criminal proceedings, but it was a case relating to the departmental proceedings after the acquittal of the criminal proceedings. The departmental proceedings were also completed in that case. The criminal court independently considered the entire evidence and disbelieved the raid and recovery at the residence of the employee and held that the said raid and recovery was not proved. In the said case, the departmental proceedings were conducted exparte, therefore, the criminal Court independently concerned and acquitted the accused. In view of the aforesaid facts and circumstances of the case, the facts in the said decision are entirely different and they are not applicable to the facts of the present case.

The learned Counsel appearing for the petitioner also relied on the judgment of the Division Bench of this Court in the case of "***P.Srinu Vs. Hindustan Petroleum Corporation Limited***[3]" in W.A.No.846 of 2003, delivered by the Honourable the Chief Justice Sri Devinder Gupta, and the Hon'ble Mr. Justice C.V. Ramulu on 20-08-2003. The facts of the said case disclose that the employee was facing departmental proceedings as well as criminal trial on the set of the same facts and

charges. The charge sheet was also issued in the criminal case. The Division Bench after perusing the charge sheet in the criminal case as well as the departmental proceedings was of the opinion that the departmental proceedings were made during the pendency of the criminal proceedings, but whereas, in the instant case, no charge sheet is placed before this court to consider the gravity of the charges and involvement of complicated questions of law and facts.

The learned counsel appearing for the respondent submits that the petitioner is going to be retired by the end of this month and if that be so, in the absence of any standing order, byelaws, rules and regulations, the petitioner will have to be let free without conducting any departmental enquiry, in which case, the respondent-bank has to pay the entire retiral benefits without taking any recourse for recovery of the misappropriated huge funds.

For the aforesaid reasons, I do not see any complicated questions of law and facts for staying the departmental proceedings and in the absence of any charges framed in the criminal case, it cannot be said that there are complicated questions of law and facts warranting to stay the departmental proceedings. I do not see any merits in the writ petition and the writ petition is not maintainable in view of the dismissal in the earlier writ petition No.10889 of 1999, dated 10-06-1999.

Accordingly, this writ petition is dismissed. No costs.

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V. Eswaraiah, J.

Dt: 24..09 .2004.

Note:

Issue CC in three days.

(B/o)

RNS/SHR.

To

1. The Deputy General Manager/Enquiry Officer,

Warangal District Co.operative Central Bank Limited,

Subedari, Hanmakonda, Warangal District.

2. The General Manager, The Warangal District Co.op. Central Bank Limited, Subedari, Hanmakonda, Warangal District.

3. Two CCs to G.P.for Cooperation, High Court of A.P., Hyderabad.(OUT),

4. Two CD copies